



U.S. Department of Justice

Environment and Natural Resources Division

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June 5, 2001

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Re: United States v. Cummins Engine Company

Dear Sirs:

The United States has received requests from certain Consent Decree engine manufacturers to agree to an amendment to their Consent Decrees allowing a 12 to 15 month delay in the October 1, 2002, deadline for the introduction of "Pull-ahead" engines (defined in Paragraph 3 of the Decrees). Other engine manufactures have announced their intent to have engines available to meet the Pull-ahead schedule. By this letter, EPA and the Department of Justice are responding to the requests for amendment of the Consent Decrees.

As you know, the Consent Decrees were entered by the Court on July 1, 1999. The Pull-ahead requirements are among the core provisions of the Consent Decrees with all of the settling engine manufacturers except International Truck and Engine. They were intended to redress excess emissions from alleged defeat device-equipped engines sold prior to October 1998 and engines sold after October 1998 under the compliance schedule incorporated in the Consent Decrees (which allowed the continued use of certain alleged defeat strategies). Each manufacturer agreed to the schedule without the benefit of a "technological infeasibility out" that would excuse or delay the compliance obligation. The Pull-ahead requirements are expected to reduce 1.2 million tons of NOx over the lifetime of those vehicles by requiring emission reductions to 2.4 g/bhp-hr 15 months earlier than required by regulation.

The Consent Decrees already reflect the parties' anticipation of, and agreement regarding, how to address the chance that an engine manufacturer might not be able to meet the Pull-ahead schedule for one or more engine families. Those provisions, including the Averaging, Banking and Trading and phase in provisions, and the non-conformance penalties (NCPs), were the result

of extensive negotiations. The parties to the Decrees specifically intended the NCPs to be set at a level that would strongly discourage noncompliance but nonetheless permit the production and sale of engines. Unless EPA puts in place NCP regulations for 2004 Model Year (MY), the Consent Decrees provide for the use of the 1998 MY NCPs with factors multiplied by 1.5. As contemplated by the Consent Decrees, EPA has initiated a rulemaking with a scheduled completion date in advance of October 2002 to establish NCPs for MY 2004.

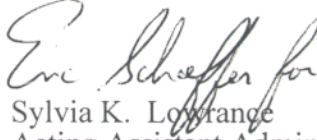
Last December the United States requested, and the Court held, a status conference in which the engine manufacturers had the opportunity to advise the Court of any problems they saw in meeting the scheduled deadline. No manufacturers indicated any need for the Court's intervention.

Based on all of the information available to us, including the announced intention of certain manufacturers to comply with the Pull-ahead requirements, the United States has determined that it cannot agree to an amendment to the Consent Decrees to modify the Pull-ahead requirements. We encourage Consent Decree manufacturers to continue to keep us informed of their progress toward meeting this requirement.

Sincerely,



John C. Cruden  
Acting Assistant Attorney General  
Environment and Natural Resource Division  
Environmental Enforcement Section



Sylvia K. Lowrance  
Acting Assistant Administrator  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency

cc: Michael Kenny, California Air Resources Board